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L.J. LOHEIT, TRUSTEE
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

IN RE:)	Case No: 10-35266-E-13L
)	DCN: NLE-1
)	
JOSE LUIS YSERN,)	TRUSTEE'S MOTION TO DISMISS
PATRICIA AILEEN YSERN,)	CASE
)	
)	DATE: AUGUST 31, 2011
)	TIME: 10:00 A.M.
)	JUDGE: RONALD H. SARGIS
<u>Debtor(s)</u>)	COURTROOM: 33

LAWRENCE J. LOHEIT, STANDING CHAPTER 13 TRUSTEE, hereby moves the
Court for an order dismissing this case pursuant to 11 U.S.C. §1307(c) as:

**1.) The debtor is in material default pursuant to §6.03 of the plan which
provides, "If Debtor defaults under this plan, or if the plan will not be complete within six
months of its stated term, not to exceed 60 months, Trustee or any other party in interest**

1 may request appropriate relief by filing a motion and setting it for hearing pursuant to
2 Local Bankruptcy Rule 9014-1.”.

3 According to the Trustee’s calculations the Plan will complete in 161 months as
4 opposed to 60 months proposed. This exceeds the maximum amount of time allowed under
5 11 U.S.C. § 1322(d). In a plan with monthly payments of \$1,527.35 per month paying
6 100% to unscheduled creditors, unsecured claims were \$137,714.11 greater than scheduled.
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8 2.) The debtor is in material default. The debtor failed to provide for the Priority
9 claim of the Franchise Tax Board (Court claim #19 as amended by Court claim #20) in the
10 amount of \$1,831.14. § 3.18 of the Plan makes this failure a breach of the plan. The Debtor
11 was provided a Notice of Filed Claim on April 12, 2011, Docket Number 41, which listed
12 this claim on Page 5 as priority and not provided for in the plan, Page 5, and indicated that
13 a motion to modify was required, Page 2, Item (f).
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18 The debtor must be current under all payments called for by any pending Plan,
19 Amended Plan or Modified Plan as of the date of the hearing on this motion or the case
20 may be dismissed.
21

22 WHEREFORE, the Trustee asks that the Court grant an order dismissing this proceeding.
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25 Dated: July 28, 2011

26 / S / Neil Enmark
27 Neil Enmark, Attorney for Trustee
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